UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY

Michael J. Hagner, Esq. (244152017)

McDOWELL LAW, PC

46 W. Main Street

Maple Shade, NJ 08052

Telephone: (856) 482-5544 Telecopier: (856) 482-5511 mhagner@mcdowelllegal.com

Attorneys for Trustee

: Case No.: 23-10412-JNP

Schmidty Kicks LLC, : Chapter 7

Debtor. : Honorable Jerrold N. Poslusny, Jr.

____X

NOTICE OF TRUSTEE'S MOTION TO ENFORCE SUBPOENA

To: Honorable Jerrold N. Poslusny, Jr.
United States Bankruptcy Court
Mitchell H. Cohen U.S. Courthouse
400 Cooper Street, 4th Floor
Camden, New Jersey 08101

All Parties on the attached Service List

Joseph D. Marchand, Chapter 7 Trustee has filed papers with the court to Enforce a Subpoena issued in the above-captioned case. Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to order the requested relief, or if you want the court to consider your views on the motion, then on or before August 29, 2023, you or your attorney must File with the court a written response, explaining your position at:

US Bankruptcy Court, District of New Jersey PO Box 2067 Camden, NJ 08101

If you mail your response, to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

You must also send a copy to:

Michael J. Hagner, Esquire McDOWELL LAW, PC 46 W. Main Street Maple Shade, NJ 08052

Attend the hearing scheduled to be held on September 5, 2023, at 11:00 a.m. in Courtroom 4C, United States Bankruptcy Court, Mitchell H. Cohen U.S. Courthouse, 400 Cooper Street, 4th Floor, Camden, NJ 08101.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

McDOWELL LAW, PC

DATED: August 8, 2023

BY: /s/ Michael J. Hagner

Michael J. Hagner, Esquire

Page 3 of 6

SCHMIDTY KICKS LLC Case No. 23-10412 (JNP) Service List

Attorney For Debtor

E. Richard Dressel Lex Nova Law, LLC 10 E. Stow Road Suite 250 Marlton, NJ 08053 856-382-8211

Email: rdressel@lexnovalaw.com

U.S. Trustee

US Dept of Justice Office of the US Trustee One Newark Center Ste 2100 Newark, NJ 07102 (973) 645-3014 Email:

Trustee

Joseph Marchand Joseph D. Marchand, Chapter 7 Trustee 117-119 West Broad Street Bridgeton, NJ 08302 856-451-7600

Email: jdmarchand@comcast.net

Special Counsel for Trustee

Joseph E. Sarachek Sarachek Law Firm 670 White Plains Road #PH Scarsdale, New York 10583 (646) 517-5420

Email: joe@saracheklawfirm.com

Attorney for Sneaker Ventures II, LLC

Richard M. Beck, Esquire Klehr Harrison Harvey Branzburg, LLP 10000 Lincoln Drive East, Suite 201 Marlton, NJ 08053 (856) 486-2700

Email: rbeck@klehr.com

Page 4 of 6

Attorney for American Express

Darryl S. Laddin, Esquire Arnall Golden Gregory LLP 171 17th Street NW Suite 2100 Atlanta, GA 30326-1031 (404) 873-8120

Email: darryl.laddin@agg.com

Attorney for American Express

Bruce S. Luckman, Esq. Sherman, Silverstein, Kohl, Rose & Podolsky, P.A. 308 Harper Drive, Suite 200 Moorestown, New Jersey 08057 856-662-0700

Email: <u>bluckman@shermansilverstein.com</u>

Attorney for American Express

Arthur J. Abramowitz, Esq.
Sherman, Silverstein, Kohl, Rose & Podolsky, P.A.
308 Harper Drive, Suite 200
Moorestown, New Jersey 08057
856-662-0700

Email:aabramowitz@shermansilverstein.com

Attorney for American Express

Ross J. Switkes, Esq. Sherman, Silverstein, Kohl, Rose & Podolsky, P.A. 308 Harper Drive, Suite 200 Moorestown, New Jersey 08057 856-662-0700

Email: rswitkes@shermansilverstein.com

Attorney for PayPal, Inc.

Alan J. Brody, Esq. GREENBERG TRAURIG, LLP 500 Campus Drive Florham Park, New Jersey 07932 973-443-3543

Email: brodya@gtlaw.com

Page 5 of 6

Attorney for ATL Jerseys, LLC and Christopher Carmichael

Ralph A. Ferro, Jr., Esq. Law Offices of Ralph A. Ferro, Jr., Esq. 66 East Main Street, 3rd Floor Little Falls, NJ 07423 (973) 200-0988

email: ralphferrojr@msn.com

Peter Indelicato 47 Lavister Drive Mt. Laurel, NJ 08054 (609) 922-3079

Email: Pete.Indelicato@gmail.com

Marie D'Adamo 1 Westwood Ave. Cherry Hill, NJ 08002 (856) 371-8416

Email: Supermar16@gmail.com

Christopher and Lauren Monaco 10 Beechtree Drive Cinnaminson, NJ 08077 (856) 816-7208

Email: cmon621@gmail.com

Michael Nelson 103 White Oak Road Cherry Hill, NJ 08034 (856) 275-7177

Email: mikenel85@gmail.com mailto:mikenel85@gmail.com Dominic Paoletti

204 Sussex Drive Cinnaminson, NJ 08077 (856) 912-8415

Email: dompaoletti@gmail.com

3818 New York LLC attn: Brian Sharpe 104 Monticello Drive Cinnaminson, NJ 08077 (609) 206-9763

Email: <u>bsharpe.hks@gmail.com</u>

Dennis Kelley 31 Volans Street Merchantville, NJ 08109 (856) 220-7832 Page 6 of 6

Email: comfortfood2u@yahoo.com

Richard Krouse 129 Morris Street Merchantville, NJ 08109 (856) 873-3137

Email: rkrouse12@gmail.com

CT Corporation System Registered Agent for eBay Inc. 820 Bear Tavern Road West Trenton, NJ 08628

Michelle Oh Huber, General Counsel eBay, Inc. 2025 Hamilton Avenue San Jose California 95125

Custodian of Records eBay, Inc. 2125 Hamilton Avenue San Jose California 95125;

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY

Michael J. Hagner, Esq. (244152017)

McDOWELL LAW, PC

46 W. Main Street

Maple Shade, NJ 08052

Telephone: (856) 482-5544 Telecopier: (856) 482-5511 mhagner@mcdowelllegal.com

Attorneys for Trustee

	X	
	:	
In re:	: Case No.: 23-10412-JNP	
	:	
Schmidty Kicks LLC,	: Chapter 7	
•	:	
Debtor.	: Honorable Jerrold N. Poslusny,	Jı
	x Hearing Date:	

CERTIFICATION IN SUPPORT OF TRUSTEE'S MOTION TO ENFORCE THE SUBPOENA PURSUANT TO FED. R. BANKR. P. 2004

- I, Michael J. Hagner, being of legal age, do hereby certify:
- 1. I am an attorney-at-law of the state of New Jersey, associated with the law firm McDowell Law PC and entrusted with the handling of this matter. As such, I have personal knowledge of the facts stated herein.
- 2. On June 2, 2023, a subpoena was served upon eBay, Inc. *See* Subpoena for 2004 examination annexed hereto as Exhibit A.
- 3. Specifically, the subpoena was served by way of regular mail and certified mail upon the following individuals/entities:
 - Michelle Oh Huber, General Counsel, eBay, 2025 Hamilton Avenue, San Jose
 California 95125;
 - Custodian of Records, eBay, 2125 Hamilton Avenue, San Jose California 95125;

Case 23-10412-JNP Doc 75 Filed 08/08/23 Entered 08/08/23 12:08:07 Desc Main Document Page 8 of 18

- C T Corporation System, Registered Agent for eBay, Inc., 820 Bear Tavern

Road, West Trenton, NJ 08628.

4. The subpoena lists a return date of June 20, 2023. *See* Exhibit A.

5. The Trustee, through its Counsel, received signed "green cards" for each registered

mailing of the subpoena. See Signed Green Cards annexed hereto as Exhibit B.

6. C T Corporation System is the Registered Agent for eBay, Inc. according to the

records filed with the State of New Jersey. See Status Report for eBay, Inc. annexed hereto as

Exhibit C.

7. The Return Date for the subpoena has expired.

8. eBay Inc. has not provided any documents or any other response to the subpoena.

9. The Trustee now moves to enforce the subpoena and to compel production of the

documents requested therein.

10. For the reasons stated above, the Trustee seeks entry of proposed Order Compelling

eBay, Inc. to Produce Documents Pursuant to Fed. R. Bankr. P. 2004 filed herewith.

I certify under penalty of perjury that the foregoing is true and correct. Executed on the 7th

day of August 2023.

McDOWELL LAW, PC

DATED: August 8, 2023

BY: <u>/s/ Míchael J. Hagner</u>

Michael J. Hagner, Esquire

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY

Michael J. Hagner, Esq. (244152017)

McDOWELL LAW, PC

46 W. Main Street

Maple Shade, NJ 08052

Telephone: (856) 482-5544 Telecopier: (856) 482-5511 mhagner@mcdowelllegal.com

Attorneys for Trustee

In re: Case No.: 23-10412-JNP

Schmidty Kicks LLC, : Chapter 7

·

Debtor. : Honorable Jerrold N. Poslusny, Jr.

___X

ORDER ENFORCING SUBPOENA

The relief set forth on the following page is hereby **ORDERED**.

Case 23-10412-JNP Doc 75 Filed 08/08/23 Entered 08/08/23 12:08:07 Desc Main Document Page 10 of 18

THIS MATTER having been opened to the Court by McDowell Law PC, counsel to Joseph D. Marchand, Chapter 7 trustee of the Bankruptcy Estate of Schmidty Kicks LLC and the Court having considered the pleadings filed herewith and good cause appearing for entry of this Order.

It is hereby ORDERED:

1.	eBay shall comply	with and respond to the Subpoena issued by the Trustee on June 2, 2023
	within	_ days of the entry of this Order.

Case 23-10412-JNP Doc 75 File (1984) Findered 08/08/23 12:08:07 Desc Main Document Page 11 of 18

UNITED STATES BAI	NKRUPI of <u>New Je</u>		
In re Schmidty Kicks LLC, Debtor		23-10412-JNP 7	
SUBPOENA FOR RULE	2004 EXAM	MINATION	
To: Custodian of Records eBay 2025 Hamilton Avenue San Jose, CA 95125 (Name of person to who	om the subpoen	ena is directed)	
■ Production: YOU ARE COMMANDED to produce at the documents, electronically stored information, or objects, and of the material: SEE ATTACHED SCHE	to permit insp		
PLACE: Offices of McDowell Law, P.C. 46 West Main Street, Maple Shade, NJ 08052		DATE AND TIME June 20, 2023 @ 03:00 P.M.	
The following provisions of Fed. R. Civ. P. 45, made applicable attached – Rule 45(c), relating to the place of compliance; Rule subpoena; and Rule 45(e) and 45(g), relating to your duty to resnot doing so. Any subpoenaed organization not a party to this proceeding sha agents, or other persons who consent to testify on its behalf, and which the person will testify, Fed.R.Civ.P. 30(b)(6) made appliances 1018 and 9014, Fed.R.Bankr.P.	45(d), relating spond to this shall designate or dispersion and the state of the st	ng to your protection as a person subject subpoena and the potential consequence one or more officers, directors, or manarth, for each person designated, the mat	et to a ces of aging ters on
ISSUING OFFICER SIGNATURE AND TITLE Joseph A. McCormick, Jr., Esq. Attorney for Joseph Marchand, Trustee ISSUING OFFICER'S NAME, ADDRESS AND Pl Joseph A. McCormick, Jr., Esq. Offices of McDowell Law, P.C. 46 West Main Street, Maple Shade, NJ 08052 (856) 482-5544	DATE June 2, 2023 HONE NUME		

Served Solution Served	Document	ane 12 of 18	08/08/23 12:08:07 Desc Main Custodian of Records	
Custodian of Records eBay	June 2, 2023	ago 0	eBay	
2025 Hamilton Avenue	June 2, 2023	170	2025 Hamilton Avenue	
San Jose, CA 95125			San Jose, CA 95125	
Served On (print name)			Manner of Service	
Custodian of Records			First Class and Certified Mail -	
eBay			Return Receipt Requested	
2025 Hamilton Avenue San Jose, CA 95125				
Served By (print name) Joseph A. McCormick, Jr., Esquire			Title Attorney for Joseph Marchand, Trustee	
	DECLARATION			
I declare under penalty of perjury under States of America that the foregoing information	er the laws of the Unation contained in	Inited the Proof of Ser	rvice is true and correct.	
Executed on June 2,2023		~	A	
Date	Signature of Ser	ver Jre	ally	
	Address of Serv	er: 46 West Ma	ain Street, Maple Shade, NJ 08052	
(This section should not be	PROOF OF e filed with the co		uired by Fed. R. Civ. P. 45.)	
received this subpoena for (name of individ-				
	on ((date)	·	
I served the subpoena by delivering a cop	by to the named pe	rson as follows	:	
0	n (date)	;	; or	
		ΠI	returned the subpoena unexecuted be	cause:
Unless the subpoena was issued on behalf of witness the fees for one day's attendance, are My fees are \$ for travel and \$ I declare under penalty of perjury the	nd the mileage allo	wed by law, in ices, for a total	the amount of \$ of \$	to the
Date:				
			Server's signature	
			Printed name and title	
	-		Server's address	
Additional information concerning attempted	ed service, etc.:			

Case 23 10412 INP Dec 75 Procedure 45(d) Foi Dec 12/07/13) Desc Main (made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

- (1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows: (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person (i) is a party or a party's officer; or
- (ii) is commanded to attend a trial and would not incur substantial expense.
- (2) For Other Discovery. A subpoena may command:
- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

- (1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction which may include lost earnings and reasonable attorney's fees on a party or attorney who fails to comply.
- (2) Command to Produce Materials or Permit Inspection. (A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.
- (B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

- (A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that: (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue
- (B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires: (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.
- (C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:
- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

- (1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:
- (A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.
- (B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.
- (C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.
- (D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

- (A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

 (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim. (B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trialpreparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.
- (g) Contempt. The court for the district where compliance is required and also, after a motion is transferred, the issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

Schmidty Kicks LLC - Chapter 7 Bankruptcy (USBC-D.NJ-Case No. 23-10412-JNP)

2004 Subpoena - eBay Schedule A

Party-Schmidty Kicks, LLC - EIN xx-xxx5611

- 1. Schedule of all Schmidty Kicks LLC monthly transactions from inception through account closing;
- 2. Complete monthly statements for all Schmidty Kicks LLC eBay accounts from inception through account closing; and
- 3. All eBay account information including names, addresses, phone numbers and email addresses.

M:\Active Files\Marchand, Joseph Chapter 7 Trustee\Schmidty Kicks LLC\Subpoenas\eBay #1\Schedule A-eBay 03 10 23.wpd



CERTIFIED MAIL® RECEIPT Domestic Mail Only 53 For delivery information, visit our web F П Certified Mail Fe 287 Extra Services Retu 000 Postmark ricted Delivery Adult Sanature Required Here Adult Signature Restricted Delivery \$ 330 JUN - 3 2023 Total Postage and Fees Sent To Orporation System Registered Agent for Bay, Inc. Street and Apr. Vo. 75 TO BOX TO B 820 Bear Taverry Road Wester Tenton, NJ 08628 PS Form 3800, April 2015 PSN 7530-02-000-9047

Case 23-10412-JNP Doc 75 File() 8/08/23 Tenered 08/08/23 12:08:07 Desc Main Document Page 16 of 18

Status Report For: EBAY INC.
Report Date: 6/1/2023
Confirmation Number: 231523020634

IDENTIFICATION NUMBER, ENTITY TYPE AND STATUS INFORMATION

Business ID Number: 0100807207

Business Type: FOREIGN PROFIT CORPORATION

Status: ACTIVE Original Filing Date: 02/14/2000

Stock Amount: N/A Home Jurisdiction: DE

Status Change Date: NOT APPLICABLE

REVOCATION/SUSPENSION INFORMATION

DOR Suspension Start N/A

Date:

DOR Suspension End N/A

Date:

Tax Suspension Start N/A

Date:

Tax Suspension End N/A

Date:

ANNUAL REPORT INFORMATION

Annual Report Month: FEBRUARY
Last Annual Report 02/27/2023

Filed:

Year: 2023

AGENT/SERVICE OF PROCESS (SOP) INFORMATION

Agent: C T CORPORATION SYSTEM

Agent/SOP Address: 820 BEAR TAVERN ROAD , WEST TRENTON, NJ, 08628

Address Status: DELIVERABLE

Main Business Address: 2025 HAMILTON AVENUE, SAN JOSE, CA, 95125

Principal Business N/A

Address:

ASSOCIATED NAMES

Associated Name: N/A Type: N/A

PRINCIPALS

Case 23-10412-JNP Doc 75 Filed 8/08/23 12:08:07 Desc Main Document Page 17 of 18

Following are the most recently reported officers/directors (corporations), managers/members/managing members (LLCs), general partners (LPs), trustees/officers (non-profits).

Title: PRESIDENT
Name: IANNONE, JAMIE

Address: 2025 HAMILTON AVENUE, SAN JOSE, , , US

Title: SECRETARY

Name: HUBER, MARIE OH

Address: 2025 HAMILTON AVENUE, SAN JOSE, , , US

Title: TREASURER

Name: BOUNDS, JOSEPH BRENT

Address: 2025 HAMILTON AVENUE, SAN JOSE, , , US

FILING HISTORY -- CORPORATIONS, LIMITED LIABILITY COMPANIES, LIMITED PARTNERSHIPS AND LIMITED LIABILITY PARTNERSHIPS

To order copies of any of the filings below, return to the service page, https://www.njportal.com/DOR/businessrecords/Default.aspx and follow the instructions for obtaining copies. Please note that trade names are filed initially with the County Clerk(s) and are not available through this service. Contact the Division for instructions on how to order Trade Mark documents.

Charter Documents for Corporations, LLCs, LPs and LLPs

Original Filing 2000 (Certificate) Date:

Changes and Amendments to the Original Certificate:

Filing Type	Year Filed
CHANGE OF AGENT AND OFFICE	2015
Annual Report Filing with address change	2015
Annual Report Filing with address change	2017
Annual Report Filing with address change	2019
Annual Report filing with officer/member change	2015
Annual Report filing with officer/member change	2017
Annual Report filing with officer/member change	2019
Annual Report filing	2021

with officer/member

Case 23-10412-JNP Doc 75 Filed 8/08/28 Energy 08/08/23 12:08:07 Desc Main Document Page 18 of 18

Note:

Copies of some of the charter documents above, particularly those filed before June 1988 and recently filed documents (filed less than 20 work days from the current date), may not be available for online download.

- For older filings, contact the Division for instructions on how to order.
- For recent filings, allow 20 work days from the estimated filing date, revisit the service center at https://www.njportal.com/DOR/businessrecords/Default.aspx periodically, search for the business again and build a current list of its filings. Repeat this procedure until the document shows on the list of documents available for download.

The Division cannot provide information on filing requests that are in process. Only officially filed documents are available for download.